

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ATLANTIC CASUALTY INSURANCE  
COMPANY,  
Plaintiff,**

**V.**

**ROBERT RAMIREZ, individually and  
d/b/a LBJ TRUCKING CO., INC.,  
LBJ TRUCKING CO., INC., CLEM'S  
YE OLDE HOMESTEAD FARMS, LTD.,  
BETTYE CRIDER CLEM, CLARENCE  
TRUMAN CLEM, KELLY CLEM, and  
CLARENCE T. "CASEY" CLEM, JR.,  
Defendants.**

**Cause No. 3:07-CV-1297-K**

**APPENDIX TO DEFENDANTS ROBERT RAMIREZ AND LBJ TRUCKING CO., INC.'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

D.APP 1	Environmental Laboratories Report (June 26, 2001)
D.APP 2 – 3	Articles of Incorporate for LBJ Trucking Co., Inc., in the State of Texas (October 17, 2002)
D.APP 4 – 5	Invoices 14572 and 14622(April 25 and 26, 2006)
D.APP 6 – 11	Defendant LBJ Trucking Co., Inc.’s Objections and Answers to Plaintiff Clarence T. “Casey” Clem, Jr.’s First Set of Interrogatories from <i>Clem’s Ye Olde Homestead Farms, Ltd., et al., v. Bill Briscoe, et al.</i> , Case No. 4:07cv285, in the United States District Court for the Eastern District of Texas, Sherman Division (October 4, 2007)
D.APP 12 – 16	Demand letter from Frederick W. Addison, III, on behalf of Lori and Casey Clem, Re: Resource Conservation Recovery Act (“RCRA”) – Pre-Suit Notice Pursuant to 42 U.S.C. § 6972(b)(1)(2) (November 20, 2006)
D.APP 17 – 18	Environmental Laboratories Report of Sample Analysis (January 21, 2002)
D.APP 19 - 33	Excerpts from the Deposition of Carolyn Benavides from <i>Clem’s Ye Olde Homestead Farms, Ltd., et al., v. Bill Briscoe, et al.</i> , Case No. 4:07cv285, in

the United States District Court for the Eastern District of Texas, Sherman  
Division (October 11, 2007)

Dated: November 27, 2007

Respectfully submitted,

/S/ Cody L. Towns

Cody L. Towns  
State Bar No. 24034713  
LYNN TILLOTSON & PINKER LLP  
750 N. St. Paul Street, Suite 1400  
Dallas, Texas 75201  
(214) 981-3800 Telephone  
(214) 981-3839 Facsimile

**ATTORNEYS FOR DEFENDANTS ROBERT  
RAMIREZ AND LBJ TRUCKING CO., INC.**

**CERTIFICATE OF SERVICE**

I certify that on November 27, 2007, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record, who have consented in writing to accept this Notice as service of this document by electronic means.

Camille Johnson  
Gary N. Schumann  
SAVRICK SCHUMANN JOHNSON MCGARR  
KAMINSKI & SHIRLEY  
6440 N. Central Expressway, Suite 107  
Dallas, Texas 75206  
(214) 368-1515 Telephone  
(214) 295-9647 Facsimile

/S/ Cody L. Towns

Cody L. Towns

03/22/2007 08:18 FAX

**Environmental Laboratories**

Bethany Tech Center • Suite 190  
400 W. Bethany Rd. • Allen, Texas 75013

June 26, 2001

REPORT OF: Solid Analysis

REPORT TO: Mr. Donald Smith  
Hensley Industries  
2108 Joe Field Rd.  
Dallas, Texas 75229

SAMPLE ID: Sand\*

SAMPLE DATE: June 05, 2001  
SAMPLE TIME: 10:00AM  
SAMPLE RECEIVED: June 05, 2001  
TIME RECEIVED: 2:50PM  
SAMPLE METHOD: Grab  
SAMPLE COLLECTED BY: Customer

SAMPLE NUMBER: 189193

**SAMPLE RESULTS:**

<u>Parameter</u>	<u>Regulatory Limits</u>	<u>Detection Limits</u>	<u>Observed Concentration</u>
<b>TCLP METALS</b>			
Antimony, mg/l	---	0.20	BDL**
Arsenic, mg/l	<5.0	0.20	BDL
Barium, mg/l	<100.0	0.05	0.54
Beryllium, mg/l	---	0.05	BDL
Cadmium, mg/l	<1.0	0.04	BDL
Chromium, mg/l	<5.0	0.05	0.29
Copper, mg/l	---	0.05	BDL
Lead, mg/l	<5.0	0.10	BDL
Mercury, mg/l	<0.2	0.004	BDL
Nickel, mg/l	---	0.10	1.3
Selenium, mg/l	<1.0	0.20	BDL
Silver, mg/l	<5.0	0.07	BDL
Thallium, mg/l	---	0.60	BDL
Zinc, mg/l	---	0.10	0.30

Sample Quality Control Information

<u>Parameter</u>	<u>Sample Preservation</u>	<u>EPA* Method</u>	<u>C.V.%</u>	<u>Standard Deviation</u>	<u>Spike Recovery%</u>	<u>Date of Analyses</u>	<u>Time of Analyses</u>	<u>Analyst</u>
TCLP Metals								
Extraction		1311				06/05/01	5:15PM	D. Schwartz
Metals Digestion - ICP		3010				06/05/01	11:00AM	K. Maxwell
Metals Digestion - Mercury		7470				06/05/01	10:00AM	D. Schwartz

06/28/2007 18:38:40(72) 727-1123

Long Distance: (800) 228-ERMI

FAX: (972) 727-1175

D.APP 000001

Form 201  
(revised 06/00)

Return in Duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
FAX: 512/463-5709

Filing Fee: \$300



**Articles of Incorporation  
Pursuant to Article 3.02  
Texas Business  
Corporation Act**

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 800133912 10/17/2002  
Document #: 18449780002  
Image Generated Electronically  
for Web Filing

**Article 1 - Corporate Name**

The name of the corporation is as set forth below:

LBJ Trucking Co., Inc.

The name must contain the word "corporation", "company", "incorporated," or an abbreviation of one of these terms. The name must not be the same as, deceptively similar to that of an existing corporate, limited liability company, or limited partnership name on file with the secretary of state. A preliminary check for the "name availability" is recommended.

**Article 2 - Registered Agent and Registered Office (Select and complete either A or B and complete C)**

☐ A. The initial registered agent is a corporation (cannot be corporation named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

First Name Carolyn	M.I. Elizabeth	Last Name Benavides	Suffix
-----------------------	-------------------	------------------------	--------

C. The business address of the registered agent and the registered office address is:

Street Address 2914 Panorama Drive	City Carrollton	State TX	Zip Code 75007
---------------------------------------	--------------------	-------------	-------------------

**Article 3 - Directors**

The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified are set forth below:

Director 1: First Name Carolyn	M.I. Elizabeth	Last Name Benavides	Suffix
-----------------------------------	-------------------	------------------------	--------

Street Address 2914 Panorama Drive	City Carrollton	State TX, USA	Zip Code 75007
---------------------------------------	--------------------	------------------	-------------------

Director 2: First Name Robert	M.I.	Last Name Ramirez	Suffix
----------------------------------	------	----------------------	--------

Street Address 2914 Panorama Drive	City Carrollton	State TX, USA	Zip Code 75007
---------------------------------------	--------------------	------------------	-------------------

Director 3: First Name Richard	M.I.	Last Name Benavides	Suffix
-----------------------------------	------	------------------------	--------

Street Address 2914 Panorama Drive	City Carrollton	State TX, USA	Zip Code 75007
---------------------------------------	--------------------	------------------	-------------------

**Article 4 - Authorized Shares**

The total number of shares the corporation is authorized to issue and the par value of each of such shares, or a statement that such shares are without par value, is set forth below.

Number of Shares	Par Value (must choose and complete either A or B)	Class	Series
1000000	<input checked="" type="checkbox"/> A. has a par value of \$.01 <input type="checkbox"/> B. without par value.		

If the shares are to be divided into classes, you must set forth the designation of each class, the number of shares of each class, and the par value (or statement of no par value), of each class. If shares of a class are to be issued in series, you must provide the designation of each series. The preferences, limitations, and relative rights of each class or series must be stated in space provided for supplemental information.

**Article 5 - Initial Capitalization**

The corporation will not commence business until it has received for the issuance of its shares consideration of the value of one thousand dollars (\$1,000).

FILED 800-631-6999

PLAINTIFF'S  
EXHIBIT

6

D. APP 0800027 doc

<b>Article 6 - Duration</b>
The period of duration is perpetual.
<b>Article 7 - Purpose</b>
The purpose for which the corporation is organized is for the transaction of any and all lawful business for which corporations may be incorporated under the Texas Business Corporation Act.
<b>Supplemental Provisions / Information</b>
[The attached addendum is incorporated herein by reference.]
<b>Effective Date of Filing</b>
<input checked="" type="checkbox"/> A. This document will become effective when the document is filed by the secretary of state.
OR
<input type="checkbox"/> B. This document will become effective at a later date, which is not more than ninety (90) days from the date of its filing by the secretary of state. The delayed effective date is:
<b>Name Reservation Document Number</b>
17656580002
<b>Incorporator</b>
The name and address of the incorporator is set forth below.
Carolyn E. Benavides 2914 Panorama Drive, Carrollton, Texas 75007
<b>EXECUTION</b>
The undersigned incorporator signs these articles of incorporation subject to the penalties imposed by law for the submission of a false or fraudulent document.
Carolyn E. Benavides
Signature of Incorporator.

FILING OFFICE COPY





No 14622

[illegible]

DATE 4/26/06

**SOL 7 BY**

PHONE F1972-323-8567

DATE	DESCRIPTION	PRICE	TOTAL
4/25/06	Goodnight Job		
	Truck 1888		
4	Trailer Loads of Black Sand	30.00	120 00
	Thank You		
	Due 7 Days		
	SUB TOTAL		
	TAX		
	TOTAL		120 00

ସମ୍ପାଦକ

**D.APP 000005**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

Clem's Ye Olde Homestead Farms, Ltd., §  
Bettye Crider Clem, Clarence Truman Clem, §  
Kelly Clem, Clarence T. "Casey" Clem, Jr., §

Plaintiffs, §

v. §

Bill Briscoe, individually, and d/b/a Briscoe §  
Land Reclamation Project, and d/b/a Bill §  
Briscoe Enterprises, Inc., Hensley Industries, §  
Inc., Robert Ramirez, individually and d/b/a §  
LBJ Trucking Co., Inc., LBJ Trucking Co., Inc., §

Defendants. §

CIVIL ACTION No.4:07cv285

**DEFENDANT LBJ TRUCKING CO., INC.'S OBJECTIONS AND  
ANSWERS TO PLAINTIFF CLARENCE T. "CASEY" CLEM, JR.'S  
FIRST SET OF INTERROGATORIES**

TO: Plaintiffs, Clem's Ye Olde Homestead Farms, Ltd., Bettye Crider Clem, Clarence Truman Clem, Kelly Clem, and Clarence T. "Casey" Clem, by and through their attorney of record, Vincent J. Hess, Kirsten M. Castafieda, James McGuire, Locke Liddell & Sapp, LLP, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201.

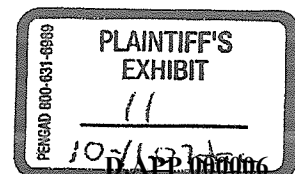
Defendant LBJ TRUCKING CO., INC., in accordance with Rules 26 and 33 of the FEDERAL RULES OF CIVIL PROCEDURE, files these Objections and Answers to Plaintiff Clarence T. "Casey" Clem, Jr.'s First Set of Interrogatories.

Respectfully submitted,

By: 

David W. Medack  
State Bar No. 13892950  
Federal Bar No. 15597

ATTORNEY IN CHARGE FOR  
DEFENDANT LBJ TRUCKING CO., INC.





HEARD & MEDACK, P.C.  
9494 Southwest Freeway, Suite 700  
Houston, Texas 77056  
(713) 772-6400 - Telephone  
(713) 772-6495 - Facsimile

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon all counsel of record by facsimile, hand delivery, certified mail, return receipt requested, and/or notice of electronic filing on this 4th day of October, 2007.

Mr. Vincent J. Hess  
Ms. Kirsten M. Castafieda  
Mr. James B. McGuire  
Locke Liddell & Sapp, LLP  
2200 Ross Avenue, Suite 2200  
Dallas, Texas 75201-6776  
**Via E-mail and/or Federal Express**

Mr. Stephen C. Dickman  
Mr. Jonathan M. Buck  
Kelly Hart & Hallman LLP  
301 Congress Avenue, Suite 2000  
Austin, Texas 78701  
**Via U.S. Mail**

Mr. John W. Slates  
Gardere Wynee Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201-4761  
**Via U.S. Mail**

  
David W. Medack

**DEFENDANT LBJ TRUCKING CO., INC.'S OBJECTIONS AND  
ANSWERS TO PLAINTIFF CLARENCE T. "CASEY" CLEM, JR.'S  
FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:**

List all violations of the environmental laws of the State of Texas or of the United States relating to the Property that you have been charged with, accused of, or notified of.

**OBJECTION:**

Defendant objects that the Interrogatory is overbroad.

**ANSWER:**

Subject to and without waiving the foregoing Objection, Defendant refers you to the proceedings commenced by the Texas Commission on Environmental Quality ("TCEQ") concerning the property, documents of which were produced in the initial disclosures and which are currently being subpoenaed by the Plaintiffs.

**INTERROGATORY NO. 2:**

Do you contend that Plaintiffs disposed of solid wastes at the Property in the past? If so, please state all facts upon which you rely for this contention, including without limitation the date of such disposal, the type and quantity of material disposed, and the basis of your knowledge of these matters.

**OBJECTION:**

Defendant objects that the Interrogatory is overbroad. The interrogatory is vague, ambiguous and subject to multiple interpretations.

**ANSWER:**

Subject to and without waiving the foregoing Objection, Defendant does not have sufficient information at this time to answer this question. Defendant will supplement once it has reviewed the TCEQ's file on the Plaintiffs.

**INTERROGATORY NO. 3:**

Do you contend that one or more of the Plaintiffs knew about and acquiesced in Briscoe's use and disposal of Foundry Sand at the Property? If so, please state all facts upon which your [sic] rely for this contention, including without limitation the name of

each of the Plaintiffs who so knew and acquiesced, the date of such knowledge and acquiescence, all other persons who were present at the time of such knowledge and acquiescence, and any and all statements by Briscoe that preceded or induced such acquiescence.

**OBJECTION:**

Defendant objects that the Interrogatory is overbroad and is obtainable from another source.

**ANSWER:**

Subject to and without waiving the foregoing Objection, Defendant does not have sufficient information at this time to answer this question. Defendant will supplement once it has reviewed the TCEQ's file on the Plaintiffs. Upon information and belief, one or more of the Plaintiffs were present on multiple occasions when foundry sand was being delivered to the property in question. As such, it is evident that Plaintiffs' acquiesce to the delivery of the foundry sand as part of the reclamation project.

**INTERROGATORY NO. 4:**

Do you contend that when you were transporting Black Sand to the Property, you had no knowledge as to whether the Property was or was not a licensed landfill or permitted treatment storage and disposal facility? If so, please state all facts upon which you rely for this contention, including without limitation a description of any effort you made to ascertain the status of the Property as a licensed landfill or permitted treatment storage and disposal facility, and the date you made any such effort.

**OBJECTION:**

Defendant objects that the Interrogatory is overbroad.

**ANSWER:**

Subject to and without waiving the foregoing Objection, Defendant asked Bill Briscoe if Defendant could dump sand at his dump. Mr. Briscoe asked Defendant for proof of no contamination. Defendant supplied the required paperwork and Mr. Briscoe agreed to accept it.

**INTERROGATORY NO. 5:**

Do you contend that the presence of Black Sand on the Property does not constitute an imminent and substantial endangerment to health or the environment? If so, please

state all facts upon which you rely for this contention, including without limitation any scientific study or chemical analysis.

**OBJECTION:**

Defendant objects that the Interrogatory is overbroad and seeks an expert opinion. It also potentially seeks information that is protected from disclosure by the attorney-client privilege or the attorney work product privilege.

**ANSWER:**

Subject to and without waiving the foregoing Objection, Yes. Defendant refers Plaintiff to the various analyses of the sand that were produced in LBJ's initial disclosures.

**INTERROGATORY NO. 6:**

Identify every person with whom you consulted, upon whom you relied, or who otherwise constituted a source of information for you in connection with the preparation of your answers to these interrogatories, and list with respect to each such person the number(s) of the interrogatories to which they helped to prepare answers or with respect to which they were consulted, relied upon, or otherwise constituted a source of information.

**OBJECTION:**

Defendant objects that the Interrogatory is overbroad. It exceeds the scope of discovery. It potentially seeks information that is protected from disclosure by the attorney-client privilege or the attorney work product doctrine.

**ANSWER:**

Subject to and without waiving the foregoing Objection, the answers were prepared by Carolyn Benavides with the assistance of LBJ's counsel.

From: unknown Page: 2/3 Date: 10/3/2007 1:59:01 PM

VERIFICATION

STATE OF TEXAS :

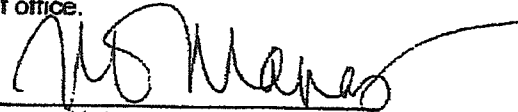
COUNTY OF Dallas :

Before me, the undersigned notary, on this day, personally appeared Carolyn Benavides, President, a person whose identity is known to me. After I administered an oath to her, upon her oath, she said she read the Objections and Answers to Plaintiff, Clarence T. "Casey" Clem, Jr.'s First Set of Interrogatories and the facts stated within it are within her personal knowledge and are true and correct.

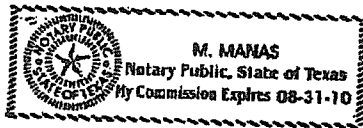


Carolyn Benavides, President  
LBJ Trucking Co., Inc.

SUBSCRIBED and SWORN TO on this 2 day of October, 2007, to certify which witness my hand and official seal of office.



Notary Public in and for  
the State of Texas



# LOCKE LIDDELL & SAPP LLP

ATTORNEYS & COUNSELORS

2200 ROSS AVENUE  
SUITE 2200  
DALLAS, TX 75201-6776

AUSTIN • DALLAS • HOUSTON • NEW ORLEANS • WASHINGTON, D.C.

Phone: (214) 740-8000  
Fax: (214) 740-8800  
www.lockeliddell.com

WRITER'S DIRECT DIAL:  
(214) 740-8670  
E-MAIL: faddison@lockeliddell.com

November 20, 2006

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Bill Briscoe, Individually, and  
d/b/a Briscoe Land Reclamation Project, and  
Bill Briscoe Enterprises, Inc.  
5917 Sicilian Circle  
Plano, TX 75093

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Bill Briscoe, Individually, and  
d/b/a Briscoe Land Reclamation Project, and  
Bill Briscoe Enterprises, Inc.  
7209 Sage Meadow Way  
Plano, TX 75024-3481

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Bill Briscoe, Individually, and  
d/b/a Briscoe Land Reclamation Project, and  
Bill Briscoe Enterprises, Inc.  
4912 Dozier  
Carrollton, TX 75010

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Robert Ramirez, Individually, and  
d/b/a LBJ Trucking Co., Inc.  
2914 Panorama Dr.  
Carrollton, TX 75007-4302

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Hensley Industries, Inc.  
2108 Joe Field Road  
Dallas, Texas 75229

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Hensley Industries, Inc.  
P.O. Box 29779  
Dallas, TX 75229-0779

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Hensley Industries, Inc.  
ATTN: Henry Baer – Registered Agent  
26<sup>th</sup> Floor / LTV Tower  
Dallas, TX 75201

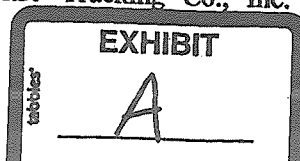
**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

LBJ Trucking Co., Inc.  
ATTN: Carolyn Elizabeth Benavides  
Registered Agent  
2914 Panorama Dr.  
Carrollton, TX 75007-4302

Re: Resource Conservation Recovery Act ("RCRA") - Pre-Suit Notice Pursuant to  
42 U.S.C. § 6972(b)(1)(2)

Dear Sir or Madam:

Please be informed we represent Lori and Casey Clem and Clem's Ye Olde Homestead Farms, Ltd. ("Clem"), in connection with the claims they have against Bill Briscoe, Individually, and d/b/a Briscoe Land Reclamation, and Bill Briscoe Enterprises, Inc. (collectively "Briscoe"), Robert Ramirez, Individually, and d/b/a LBJ Trucking Co., Inc. (collectively "Ramirez"), Hensley



D.APP 000012



November 20, 2006

Page 2

Industries, Inc. ("Hensley"), and LBJ Trucking Co., Inc. ("LBJ"). Clem's claims are under RCRA, 42 U.S.C. § 6972(a)(1)(A)(B). Our telephone number is set forth above.

Clem's claims arise out of the improper generation, transport, storage, disposal and presence of solid waste in the form of Municipal Solid Waste and foundry sand at 1639 Parker Rd., Carrollton, Texas 75010 in Denton County, Texas ("the Site").

### BACKGROUND

In 2001, Bill Briscoe began performing reclamation work on approximately 46 to 48 acres that make up a part of the property located at 1639 Parker Road in Carrollton, Texas. Briscoe contracted with Clem to bring in clean fill material as a part of a project to raise certain lands owned by Clem out of the flood plain. The project moved forward without incident until 2005. Beginning at that time, unbeknownst to Clem, and continuing through 2006, and more specifically on May 2, 2006, Briscoe began accepting municipal solid waste and foundry sand, a Class 2 non-hazardous industrial waste, and placing it on the Clem's property. Hensley generated the foundry sand and provided it to Ramirez and LBJ Trucking. Ramirez and LBJ Trucking transported municipal solid waste and foundry sand to the site. Hensley and Briscoe, likewise, arranged for the disposal of municipal solid waste and foundry sand at the Site. Substantial quantities of municipal solid waste and foundry sand remain at the Site and still remain to be removed from the Site.

### RESOURCE CONSERVATION AND RECOVERY ACT

Section 7002(a)(1)(A) of RCRA, 42 U.S.C. § 6972(a)(1)(A), requires that sixty (60) days prior to the initiation of a civil suit under the authority of 42 U.S.C. § 6972(a)(1)(A), notice of intent to sue must be given. The purpose of this letter is to inform you that Clem intends to bring a citizen's suit sixty (60) days from the date of this letter under 42 U.S.C. § 6972(a)(1)(A) against Briscoe, Ramirez, Hensley, and Ramirez for the generation, transport, disposal, storage, presence, and release of solid wastes, including but not limited to municipal solid waste and foundry sand. These releases have violated the permits, standards, regulations, conditions, requirements, prohibitions, and/or orders, which have become effective pursuant to RCRA. Clem's suit will seek prospective mandatory injunctive relief requiring Briscoe, LBJ, Hensley, and Ramirez to address, respond to, and remediate conditions at the Property, and also for civil penalties and attorneys' fees.

Pursuant to RCRA, 42 U.S.C. § 6945(a), open dumping of solid waste is prohibited. Open dumping, by definition, includes disposal of solid waste anywhere other than at a licensed landfill or permitted treatment, storage and disposal facility. Disposal includes, *inter alia*, the "discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste, or hazardous waste, or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." See, 42 U.S.C. § 6903(3). Solid waste includes discarded material, garbage, refuse, waste sludge from treatment facilities, and any type of material which is discarded except for domestic sewage, irrigation return flows permitted pursuant to the CWA and nuclear waste. See, 42 U.S.C. § 6093(27).

Briscoe, LBJ, Hensley, and Ramirez and their predecessors have contributed and are contributing to the past and present disposal of solid waste in violation of, *inter alia*, the open dumping provisions of RCRA and its corresponding regulations. The violations arise out of the discharge of solid waste, including but not limited to, municipal solid waste and foundry sand. The

November 20, 2006

Page 3

violations set forth herein, and the impacts from such violations of RCRA have been ongoing, are continually occurring, and will continue to exist until they are abated and properly remediated. They include, but are not limited to, the generation, transport, disposal, storage, discharge, release, and presence of solid waste in violation of 42 U.S.C. § 6945(a).

More specifically, Ramirez and LBJ have failed to prevent the transportation of industrial non-hazardous waste for disposal at an unauthorized site, not only in violation of the RCRA sections set forth above, but also in violation of Texas Health and Safety Code Chapter 361, 30 TEX. ADMIN. CODE § 335.2(a)(b). In the same manner, Hensley has generated and arranged for disposal of municipal solid waste, foundry sand, and non-hazardous industrial waste at the site. By so doing, Hensley has caused, suffered, and allowed the disposal of such waste without authorization by permit in violation of 30 TAC § 335.2(a)(b) and Texas Health and Safety Code Chapter 361.

Briscoe, as operator at the site, has likewise caused, suffered, allowed, and permitted the storage, processing or disposal of municipal solid waste and non-hazardous industrial solid waste without a permit in violation of 30 TAC § 335.2(a)(b) and Texas Health and Safety Code Chapter 361.

Briscoe, Ramirez, Hensley and LBJ are also in violation of 40 CFR § 257.1(c) in that each defendant has played a part in creating a solid waste disposal facility that does not satisfy the criteria set forth in 40 CFR § 257. More specifically, the disposal facility at which Hensley's waste, transported by Ramirez and LBJ, and operated by Briscoe, fails to satisfy the following criteria:

- 40 CFR § 257.3-1 – Because the disposal facility is located in a floodplain;
- 40 CFR § 257.3-3 – Because the facility is not designed to prevent discharges of pollutants into waters of the United States and has no permit for such discharges. In the same manner, the disposal facility has not been designed to prevent discharges of dredge and fill material from it to waters of the United States, also in violation of 40 CFR § 257.3-3.

In addition to the statutory provisions referred to herein, Clem may also seek actual property damages, reliance damages, consequential damages, response costs, and costs of litigation under Texas or federal, statutory or common law.

Please contact me should you have any questions concerning this notice, or should you believe this notice is incorrect in any respect. During the notice period, we are available to discuss this matter with you, and hope that negotiations can be instituted immediately in an effort to resolve this matter and avoid the bringing of a civil action against Briscoe, LBJ, Hensley, and Ramirez.

November 20, 2006

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I look forward to discussing this matter with you or your representative. If you have any questions or need clarification of the issues set forth herein, please do not hesitate to contact me.

Very truly yours,

LOCKE LIDDELL & SAPP LLP  
Attorneys & Counselors

By:   
Frederick W. Addison, III

FWA:kp

cc: **VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Richard Greene  
Regional Administrator - *Mail Code: 6RA*  
U.S. EPA, Region  
1445 Ross Avenue  
Suite 1200  
Dallas, TX 75202-2733

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Stephen L. Johnson  
U.S. EPA Acting Administrator - *Mail Code 1101A*  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Alberto Gonzales  
U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Jacqueline S. Hardee  
Solid Waste Permits - *Mail Code 126*  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

November 20, 2006

Page 5

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Alan Batcheller  
Remediation Division – *Mail Code 225*  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Frances E. Phillips  
Gardere Wynne Sewell LLP  
Thanksgiving Tower  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201



# Environmental Laboratories

Bethany Tech Center • Suite 190  
400 W. Bethany Rd. • Allen, Texas 75013

## Report of Sample Analysis

Hensley Industries  
2108 Joe Field Road  
Dallas TX, 75229  
ATTN: Donald Smith

Page: Page 3 of 16  
Project: Hensley Industries  
Project #: 94017023  
Print Date/Time: 01/21/02 1721

<u>Laboratory ID #:</u> 0201221-01	<u>Sample Type</u> Grab	<u>Matrix</u> Solid	<u>Sample Collected By</u> Brady Gillar	<u>Customer</u>
<u>Sample Description</u> B-15 Baghouse Dust		<u>Sample Date/Time</u> 01/09/02 0900		

Analyte(s)	Result	*SRL	**MRL	Units	Method #	Analysis Date/Time	Analyst	Flag
<b>Metals (TCLP)</b>								
Antimony	ND	0.20	0.20	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Arsenic	ND	0.20	0.20	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Beryllium	ND	0.050	0.050	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Cadmium	ND	0.040	0.040	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Chromium	ND	0.050	0.050	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Copper	ND	0.40	0.40	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Lead	ND	0.10	0.10	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Mercury	ND	0.0040	0.0040	mg/l	EPA 1311/7470A	01/15/02 1404	DES	
Nickel	ND	0.10	0.10	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Selenium	ND	0.20	0.20	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Silver	ND	0.070	0.070	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Thallium	ND	0.60	0.60	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	
Zinc	0.46	0.25	0.25	mg/l	EPA 1311/6010B	01/11/02 1847	SPS	

\*Sample Reporting Limit \*\*Method Reporting Limit

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

10272007972322AM 123

Long Distance: (800) 228-ERMI

FAX: (972) 727-1175

D.APP 000017


**Environmental Laboratories**

 Bethany Tech Center • Suite 190  
 400 W. Bethany Rd. • Allen, Texas 75013

**Report of Sample Analysis**

 Hensley Industries  
 2108 Joe Field Road  
 Dallas TX, 75228  
 ATTN: Donald Smith

 Page: Page 1 of 16  
 Project: Hensley Industries  
 Project #: 94017023  
 Print Date/Time: 01/21/02 1721

Attached is our analytical report for the samples received for your project. Below is a list of your individual sample descriptions with our corresponding laboratory number. We also have enclosed a copy of the Chain of Custody that was received with your samples and a form documenting the condition of your samples upon arrival. Please note any unused portion of the samples may be discarded upon expiration of the EPA holding time for the analysis performed or after 30 days from the above report date, unless you have requested otherwise.

**Sample Identification**

<u>Laboratory ID #</u>	<u>Client Sample ID</u>	<u>Matrix</u>	<u>Sampled Date/Time</u>	<u>Received Date/Time</u>
0201221-01	B-15 Baghouse Dust	Solid	01/09/02 0900	01/09/02 1135

Thank you for the opportunity to serve your environmental chemistry analysis needs. If you have any questions or concerns regarding this report please contact our Customer Service Department at the phone number below.

Respectfully submitted,

 Kendall K. Brown  
 President

\*Sample Reporting Limit \*\*Method Reporting Limit

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

10292007 (PT) 327-1123

Long Distance: (800) 228-ERMJ

FAX: (972) 727-1175



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

CLEM'S YE OLDE HOMESTEAD FARMS,) )  
LTD, BETTYE CRIDER CLEM, ) )  
CLARENCE TRUMAN CLEM, KELLY ) )  
CLEM, CLARENCE T. "CASEY" ) )  
CLEM, JR. ) )

Plaintiffs, ) )

VS ) )

NO. 4:07cv285

BILL BRISCOE, INDIVIDUALLY, ) )  
AND D/B/A BRISCOE LAND ) )  
RECLAMATION PROJECT, ET AL ) )

VIDEOTAPED

ORAL DEPOSITION

OF

CAROLYN BENAVIDES

OCTOBER 11, 2007

ANSWERS AND DEPOSITION OF CAROLYN BENAVIDES,  
produced as a witness at the instance of the  
Plaintiffs, taken in the above-styled and -numbered  
cause on the 11th day of October, 2007, from 9:27 a.m.  
to 3:51 p.m., before Deborah A. Copeland, a Certified  
Shorthand Reporter in and for the State of Texas,  
Registered Professional Reporter, reported by machine  
shorthand at the offices of Locke, Lord, Bissell &  
Liddell, located at 2200 Ross Avenue, in the City of  
Dallas, County of Dallas and State of Texas.

A P P E A R A N C E S

FOR THE PLAINTIFFS

MR. VINCENT J. HESS  
MR. JAMES MCGUIRE  
Locke Lord Bissell & Liddell, LLP  
2200 Ross Avenue, Suite 2200  
Dallas, Texas 75201  
214.740.8000  
vhess@lockelord.com

and

MR. J. MARK MCPHERSON  
McPherson & Associates, P.C.  
17400 Dallas Parkway, Suite 112  
Dallas, Texas 75287  
972.381.9800  
mark@mctexlaw.com

FOR LBJ TRUCKING COMPANY, INC.

MR. DAVID W. MEDACK  
Heard & Medack, P.C.  
9494 Southwest Freeway, Suite 700  
Houston, Texas 77074  
713.772.6400  
dmedack@heardmedackpc.com

FOR HENSLEY INDUSTRIES, INC.

MR. JOHN W. SLATES  
Gardere Wynne Sewell, LLP  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201  
214.999.3000  
jslates@gardere.com

ALSO PRESENT: Ben Bekerman, Videographer  
Bettye Clem  
Kelly Clem  
Clarence Truman Clem

1 Q Has he been in Mexico?

2 A He travels, yes.

3 Q Let me make sure I understand. This is  
4 something else we covered this morning, but I want to  
5 make sure I understand it. With -- regarding LBJ,  
6 your company, that in the proceedings in front of the  
7 environmental agency, the Texas Commission on  
8 Environmental Quality, TCEQ, that LBJ does not have a  
9 lawyer representing it in the TCEQ proceedings; is  
10 that correct?

11 A That's correct.

12 Q Is there anyone else, for example, an  
13 environmental consultant, who is representing LBJ in  
14 the TCEQ proceedings?

15 A No. The only other person I've spoke to  
16 about it was Tom McCormick.

17 Q And Mr. McCormick is with Hensley?

18 A Yes.

19 Q We've talked some already today about the  
20 foundry sand or sand or black sand that LBJ  
21 transported from the Hensley site to the Briscoe  
22 reclamation site. Has LBJ ever hauled anything else  
23 from the Hensley site besides the sand?

24 A No.

25 Q Has LBJ ever hauled anything else to the

1 months. And so he would get on the horn, I guess, and  
2 confirm the tickets, give them to the little girls  
3 downstairs and then they'd call me and say, You'll  
4 have a check Friday, or come pick it up Monday.

5 Q So it --

6 A So -- so I told him that I could not  
7 possibly, you know, finance his dump fees for two  
8 months or six weeks or whatever it might be, so  
9 Hensley needed to open an account out there so they  
10 could pay them directly and then I would bill them for  
11 the trucking part of it.

12 Q Now, how did -- when you were calling around  
13 for quotes for the dump fees, how did you know about  
14 the Briscoe site, the Briscoe reclamation site?

15 A I asked around, made a few phone calls to  
16 other people that we haul for, said, Is there anywhere  
17 else that will take clean sand, and they gave me  
18 Mr. Briscoe and Sandstorm's name, and I called them  
19 up. Told them we had sand, uncontaminated sand, had  
20 soil testing to prove it. It was clean. They said,  
21 Okay. We'll take it.

22 I asked Hensley for the reports, they  
23 gave them to me. I furnished them to both Sandstorm  
24 and Briscoe periodically anytime they asked me for it.  
25 It was all good. We hauled it, dumped it out there,

1 and paid the fee and moved on.

2 Q Now, were you the person at LBJ who received  
3 the contact from the TCEQ in April or May of 2006 when  
4 TCEQ contacted LBJ about the issues at the Briscoe  
5 site?

6 A Yes.

7 Q Do you remember who from the TCEQ contacted  
8 you?

9 A No.

10 Q This was after your father, Robert Rameriz,  
11 was at the Briscoe site and was told -- told to return  
12 the load to Hensley, right?

13 A Right. The agent that I did work with on my  
14 part of the case was Alison. A young lady by the name  
15 of Alison Echols, maybe, at the TEQC.

16 Q When was the last time you spoke with Alison?

17 A Probably June.

18 Q Of this year?

19 A Yes. Of '07.

20 Q Now, you mentioned you had been at the --  
21 actually present on site at the Briscoe reclamation  
22 project on two different occasions. And was it both  
23 times that you saw somebody there in the pickup?

24 A An older man. Yeah. I think on another  
25 occasion I told Mr. Briscoe I'd come out to see him

1 referenced; do you see that?

2 A Uh-huh.

3 (Exhibit 4 marked.)

4 Q Let me refer you to item -- the item listed  
5 there as Number 4. Ms. Benavides, the court reporter  
6 has handed you a document marked as Plaintiff's  
7 Exhibit 4. Have you seen this document before?

8 A Yes.

9 Q It is a two-page document, correct, or at  
10 least two pages are here, correct?

11 A Yes.

12 Q Okay. This is -- well, can you tell me what  
13 this document, Plaintiff's Exhibit 4, is?

14 A A report of the sample analysis of the sand  
15 at Hensley.

16 Q Is this the report that you had mentioned  
17 earlier today that Hensley provided you?

18 A Yes. I believe there is another one, too.

19 Q I think we may come to that a little bit  
20 later.

21 Do you remember who from Hensley gave  
22 you this document, Plaintiff's Exhibit 4?

23 A No. I called to the office and they would  
24 give it to Martine and Martin would give it to our  
25 driver, and then we would take it down to Mr. Briscoe



1 or Sandstorm when they asked for it.

2 Q Now, is this the -- strike that.

3 MR. HESS: Let's mark this as 5.

4 (Exhibit 5 marked.)

5 Q (By Mr. Hess) Ms. Benavides, the court  
6 reporter has handed you another document. This one is  
7 marked as Plaintiff's Exhibit 5. Is this the other  
8 report you mentioned a moment ago?

9 A Yes.

10 Q Okay. So we have Plaintiff's Exhibit 4 and  
11 Plaintiff's Exhibit 5. And these were the two sets of  
12 test results concerning the sand that Hensley provided  
13 to LBJ; is that correct?

14 A Yes.

15 Q You'll notice on -- let me ask you first,  
16 when did Hensley provide LBJ with either of these sets  
17 of test results?

18 A In the beginning, and then any time we asked  
19 for them.

20 Q Okay. So let's take the beginning first. In  
21 the beginning, do you mean when you were contacted by  
22 Hensley about hauling away the sand?

23 A Yes.

24 Q And did you ask for test results regarding  
25 the contents of the sand?

1           A       Yes. I asked them is it contaminated or  
2       uncontaminated? They said it was uncontaminated. I  
3       said, Do you have proof of that? And they said yes.

4           Q       You don't recall who at Hensley you were  
5       speaking to that told you it was uncontaminated?

6           A       No.

7           Q       Might have been Dennis, but you're not sure?

8           A       Might have been Tom.

9           Q       Might have been Tom. Okay. So in response  
10      to your question you were given test results.

11                   Do you recall when you made that initial  
12      request to Hensley for test results?

13          A       Do I recall it?

14          Q       Yeah.

15          A       Yes.

16          Q       But do you recall when? The time?

17          A       It was in late 2000, because I had these  
18      reports in my hand when I was calling the dumps,  
19      because that's their first question, is it  
20      contaminated or uncontaminated, and I said  
21      uncontaminated. The price is different. Then I would  
22      give them this, or they said, Can you fax it to me.  
23      That's why they gave me the bid that they did, the  
24      dump fee.

25          Q       Did you send any of the test results to

1 Q Have you ever at any time called ERMI to ask  
2 them for their interpretation of these test results?

3 A No.

4 Q Did you ever think of doing that?

5 A No.

6 Q Because Hensley told you it was  
7 uncontaminated, you took them at their word?

8 A Absolutely.

9 Q Now -- okay. I'm sorry. You mentioned that  
10 at the beginning when you started -- when you were  
11 doing the preparatory work for hauling the sand from  
12 Hensley that you'd asked for test results, but then  
13 you mentioned also, if I understood you correctly,  
14 that you made it at least one, maybe more than one,  
15 additional request to Hensley sometime later for test  
16 results?

17 A Yes.

18 Q How many times did you ask Hensley for test  
19 results?

20 A Eight to 12.

21 Q And what -- eight to 12 times. And this was  
22 from approximately late 2000 until about May of 2006;  
23 is that right?

24 A Yes. Yes.

25 Q And May of 2006 is when LBJ stopped hauling

1 Incorporation that you filed with the State when you  
2 were incorporating LBJ Trucking Company as a  
3 corporation?

4 A Yes.

5 Q Let me refer you to the upper right of the  
6 first page on the third line. There's a filing, then  
7 there's a filing number and then a date. And the date  
8 appears to be October 17, 2002; is that what you read  
9 there?

10 A Yes.

11 Q Does that sound correct to you from your  
12 recollection that it was somewhere around October 17th  
13 of 2002 that LBJ Trucking Company was incorporated?

14 A Yes.

15 Q Now, if you look under that on the first page  
16 there's a reference under Item B for the initial  
17 registered agent, and there's a person listed,  
18 Carolyn Elizabeth Benavides; do you see that?

19 A Yes.

20 Q That's you, correct?

21 A That's correct.

22 Q And then if we look under Article 3, there  
23 are three directors listed. There's you, Carolyn  
24 Elizabeth Benavides.

25 A Yes.

1 project on the Clem property?

2 A Today?

3 Q Today.

4 A No.

5 Q What about before the settlement conference  
6 with the TCEQ in January of this year, if Hensley had  
7 sent you test results for the sand and somewhere in  
8 the test results there's a statement, this is a  
9 Class 2 industrial waste, would you have accepted the  
10 sand and shipped it to the Briscoe reclamation site on  
11 the Clem property?

12 MR. MEDACK: Objection. Form. You can  
13 answer, ma'am.

14 A Probably not.

15 Q (By Mr. Hess) Why is that?

16 A Because I didn't -- wouldn't have known at  
17 the time what a Class or Type 2 -- did you say Class 2  
18 or Type 2?

19 Q Class 2.

20 A Class 2 was. And I would ask them what is  
21 that and they would have to explain and I would have  
22 to do my own research. But that's not the issue, as I  
23 understand, with the TCEQ. It's not an issue of  
24 contaminated or uncontaminated, the issue is the type.  
25 And in my conversations with Tom McCormick, now

1 they've been pushing for Type 3, which would allow  
2 them to dump it anywhere.

3 Q And this is Hensley --

4 A Tom McCormick.

5 Q -- wanting the sand to be classified as  
6 Type 3?

7 A Yes.

8 Q And that's what you discussed with  
9 Mr. McCormick at Hensley?

10 A Since this whole thing started, yes. Prior  
11 to that, I had no knowledge of any classification. It  
12 was sand that we were hauling that was uncontaminated.

13 Q Has Mr. McCormick told you what Hensley is  
14 doing now with the sand?

15 A No.

16 Q But since your father, Robert Rameriz, was  
17 sent back to Hensley to return that load of sand, LBJ  
18 has not hauled any sand for Hensley?

19 A No, we have not.

20 Q Has Mr. McCormick told you that if the sand  
21 is classified as a Class 3 material that then Hensley  
22 would again use LBJ to ship the sand to a landfill  
23 somewhere?

24 A Well, I'd have to find out what a Type 3 is.

25 Q So Mr. McCormick has mentioned Type 3 to you,



1 but you do not know what that is?

2 A No. He told me that it was a classification  
3 that allowed us to dump it in other facilities.

4 Q But this time you're not just going to take  
5 their word for it?

6 A No, sir.

7 Q Have you ever talked to a Greg Briscoe?

8 A Greg who?

9 Q Briscoe.

10 A No.

11 Q How about Janet Briscoe?

12 A No. Janet, did you say?

13 Q Yes. Janet Briscoe.

14 A Other than answering the phone, I haven't had  
15 any conversations with her.

16 Q Okay. So when you called Briscoe, sometimes  
17 Janet Briscoe answered the phone?

18 A A lady would answer. I'm assuming that was  
19 Janet Briscoe. I don't know who she is.

20 Q Okay. Now, Ms. Benavides, you're aware that  
21 in this lawsuit that we're here for today, that  
22 Hensley has filed a cross-claim against LBJ?

23 A Yes.

24 Q Do you have any plans, sitting here today, to  
25 file a cross-claim on behalf of LBJ against Hensley?

1 STATE OF TEXAS X

2 COUNTY OF DALLAS X

3  
4 I, Deborah A. Copeland, a Certified  
5 Shorthand Reporter duly commissioned and qualified in  
6 and for the State of Texas, do hereby certify that  
7 there came before me on the 11th day of October, 2007,  
8 in the offices of Locke, Lord, Bissell & Liddell,  
9 L.L.P., located at 2200 Ross Avenue, in the City of  
10 Dallas, State of Texas, the following named person,  
11 to-wit: CAROLYN BENAVIDES, who was duly sworn to  
12 testify the truth, the whole truth, and nothing but  
13 the truth of knowledge touching and concerning the  
14 matters in controversy in this cause; and that she was  
15 thereupon examined upon her oath and her examination  
16 reduced to typewriting under my supervision; that the  
17 deposition is a true record of the testimony given by  
18 the witness.

19 I further certify that pursuant to FRCP Rule  
20 30(e) that the signature of the deponent:

21   x   was requested by the deponent or a party  
22 before the completion of the deposition, and that  
23 signature is to be before any notary public and  
24 returned within 30 days from date of receipt of the  
25 transcript:

1           \_\_\_ was not requested by the deponent or a  
2 party before the completion of the deposition.

3           I further certify that I am neither attorney nor  
4 counsel for, nor related to or employed by any of the  
5 parties to the action in which this deposition is  
6 taken, and further that I am not a relative or  
7 employee of any attorney or counsel employed by the  
8 parties hereto, or financially interested in the  
9 action.

10  
11           IN WITNESS WHEREOF, I have hereunto set my hand  
12 this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

13  
14  
15           Deborah A. Copeland  
16           DEBORAH A. COPELAND  
17           Texas CSR 5730  
18           Expiration Date 12/31/09  
19           Firm Registration No. 526  
20           Corporate Plaza 1/Suite 152  
21           4950 North O'Connor Road  
22           Irving, Texas 75062  
23           972.719.5000/972.717.3985(fax)  
24  
25

